

1 Michael P. Matesky, II
2 Matesky Law PLLC
3 1001 4th Avenue, Suite 3200
4 Seattle, WA 98154
5 Ph: 206.701.0331
6 Fax: 206.701.0332
7 Email: mike@mateskylaw.com

8 [Additional counsel appearing on signature page]

9 *Attorneys for Plaintiff and the alleged Class*

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE WESTERN DISTRICT OF WASHINGTON**

13
14 ROSALYNE SWANSON, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 NATIONAL CREDIT SERVICES, INC., a
19 Washington corporation,

20 Defendant.

Case No. 19-cv-1504-RSL

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

21 Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26(f), and the Court's
22 October 15, 2019 Order (Dkt. 13), Plaintiff Rosalyne Swanson and Defendant National Credit
23 Services, Inc. ("NCS") provide the following joint status report.

24 **1. Statement of the Case.**

25 Plaintiff Rosalyne Swanson has filed the instant alleged class action against Defendant
26 NCS pursuant to the Telephone Consumer Protection Act ("TCPA"). Plaintiff alleges that

27 JOINT STATUS REPORT AND
28 DISCOVERY PLAN

Defendant's debt collection calling practices violate the TCPA. Defendant is a debt collection company which specializes in student loan debt recovery. As part of its business, Defendant places telephone calls to persons like Swanson in an attempt to recover on their student loans. Plaintiff alleges that such calls are made in violation of the TCPA because NCS places the calls using an automatic telephone dialing system without first securing prior express consent. NCS denies that any violation of the TCPA occurred and has filed its Answer and affirmative defenses.

2. Proposed Deadline for Joining Additional Parties.

The parties agree that additional parties will be joined by January 22, 2020.

3. Consent to a Magistrate.

No.

4. Discovery Plan.

A. Initial Disclosures.

Plaintiff served her initial disclosures on November 5, 2019. NCS served its initial disclosures on November 6, 2019.

B. Subjects, Timing, and Phasing of Discovery.

The parties anticipate discovery concerning the following topics: records of phone calls made by NCS to Plaintiff and members of the putative class; NCS's call lists; NCS's dialing technology; NCS's records of consent, if any; class certification; and any expert opinions proffered by either party.

The parties do not believe that discovery should be conducted in phases.

As to the timing of discovery, Plaintiff proposes the following tentative schedule:

Event	Proposed Date
Fact Discovery Cutoff	May 15, 2020
Initial Expert Reports Due	June 15, 2020
Rebuttal Expert Reports Due	July 15, 2020

Expert Discovery Cutoff	August 17, 2020
Deadline for Motion for Class Certification	September 18, 2020
Deadline to Oppose Motion for Class Certification	October 16, 2020
Deadline to Reply in Support of Motion for Class Certification	October 30, 2020

The parties propose that a subsequent case management conference be held following a decision on class certification to establish deadlines for the remainder of the case, including dispositive motion deadlines, pre-trial, and trial.

Plaintiff's proposed deadlines for briefing class certification are beyond the period set forth in LCR 23(i)(3), however good cause exists for an extension. Plaintiff's proposed schedule will ensure that a motion for class certification is filed on a fulsome record after an adequate period of class and expert discovery. "The class action determination can only be decided after the district court undertakes a "rigorous analysis" of the prerequisites for certification." *ABS Entm't, Inc. v. CBS Corp.*, 908 F.3d 405, 427 (9th Cir. 2018) (quotations omitted); *See also* Federal Judicial Center, *Manual for Complex Litigation, Fourth* § 21.133 ("Some local rules specify a short period within which the plaintiff must file a motion to certify a class action. Such rules, however, may be inconsistent with Rule 23(c)(1)(A)'s emphasis on the parties' obligation to present the court with sufficient information to support an informed decision on certification. Parties need sufficient time to develop an adequate record.").

NCS asserts that compiling records of consent and calls over a four-year TCPA class period is time consuming and may require expert analysis. Thus extending the class certification deadline beyond the period set forth in LCR 23(i)(3) (March 17, 2020) is necessary.

C. Electronically Stored Information (ESI).

The parties have reported that they are taking reasonable steps to preserve potentially relevant ESI in their possession. The parties have agreed to negotiate in good faith to prepare a

1 mutually acceptable ESI agreement based on the Court's Model Agreement Regarding Discovery
2 of Electronically Stored Information, which the parties will subsequently file with the Court.

3 **D. Privilege Issues.**

4 The parties have agreed to negotiate in good faith to prepare a mutually acceptable
5 protective order that contains provisions dealing with the production of privileged materials in
6 discovery, which the parties will subsequently file with the Court.

7
8 **E. Limitations on Discovery.**

9 The parties do not anticipate the need for any changes or limitations on discovery at this
10 time, but reserve the right to seek such limitations in the future should the need arise.

11 **F. Other Discovery Orders.**

12 The parties anticipate the need for an order approving the parties' ESI agreement and a
13 protective order to govern the production of privileged materials and the use of information in
14 discovery designated as "confidential," both of which the parties will subsequently file with the
15 Court.

16 **5. Responses to Local Rule 26(f)(1).**

17 **A. Potential for Early Resolution.**

18 Settlement appears unlikely at this time.

19 **B. Alternative Dispute Resolution.**

20 At this time, the parties have not agreed to participate in the alternative dispute resolution
21 program. The parties have agreed to reconsider participating in the alternative dispute resolution
22 program as the case proceeds.

23 **C. Related Cases.**

24 The Parties are not aware of any related cases.

25 **D. Discovery Management.**

26 The parties do not anticipate the need for any changes or limitations on discovery at this

1 time, but reserve the right to seek such limitations in the future.

2 The parties will meet and confer regarding all discovery disputes as required by Local Rule
3 37, and—if the parties cannot resolve the dispute—agree to mutually decide whether to submit the
4 dispute to the Court by motion under Local Rule 7(d) or through the expedited joint motion
5 procedure contemplated by Local Rule 37(a)(2).

6 Third-party discovery will likely be limited, but the parties agree to share information
7 obtained through third-party discovery, and will revisit the need for a cost-sharing agreement with
8 respect to third-party discovery should the need arise.

9 The parties agree to revisit the need for discovery conferences, case management
10 conferences, or settlement conferences should the need arise.

11 **E. Anticipated Discovery.**

12 See above.

13 **F. Phasing Motions.**

14 See above.

15 **G. Preservation of Discoverable Information.**

16 The parties have reported that they are taking reasonable steps to preserve and collect
17 potentially relevant information, evidence, and documents in their possession, including ESI.

18 **H. Privilege Issues.**

19 See above.

20 **I. Model Protocol for Discovery of ESI.**

21 The parties anticipate that this case will involve the production of ESI, and have agreed to
22 negotiate in good faith to prepare a mutually acceptable ESI agreement based on the Court's Model
23 Agreement Regarding Discovery of Electronically Stored Information, which the parties will
24 subsequently file with the Court.

25 **J. Alternatives to the Model Protocol for Discovery of ESI.**

26 See above.

6. Discovery Deadlines.

See above.

7. Bifurcation.

The parties agree that neither discovery nor trial in this case should be bifurcated.

8. Pretrial Statements and Pretrial Order.

At this time, the parties have not agreed to dispense with the pretrial statements and pretrial order contemplated by Local Rules 16(e), (h), (i), and (k), and 16.1. The parties agree to revisit this issue at a later date.

9. ADR Options.

At this time, the parties have not agreed to participate in the alternative dispute resolution program.

10. Suggestions for Shortening or Simplifying the Case.

At this time, the parties do not have any further suggestions for shortening or simplifying this case.

11. Trial Date.

The parties propose that a trial date be set at a subsequent scheduling conference

12. Jury or Non-Jury Trial.

Plaintiff has made a jury demand.

13. Number of Trial Days.

The parties believe that a trial will require approximately five days to complete.

14. Contact Information for Counsel.

The names, addresses, and telephone numbers of all trial counsel for Plaintiff are listed below as undersigned counsel. David J. Kaminski and Stephen A. Watkins are trial counsel for NCS.

15. Scheduling Conflicts for Trial.

At this time, counsel is not aware of any conflicts that would interfere with scheduling a

trial date in this matter.

16. Service.

Plaintiff has completed service on Defendant.

17. Scheduling Conference.

The parties wish to hold a scheduling conference before the Court enters a scheduling order in this case.

18. Disclosure Statements.

Defendant has filed its disclosure statement

DATED this 12th day of November, 2019.

Respectfully submitted,

/s/ Patrick H. Peluso

Woodrow & Peluso, LLC

Steven L. Woodrow
Patrick H. Peluso
3900 E. Mexico Avenue, Suite 300
Denver, CO 80210
Tel: (720) 213-0675
Fax: (303) 927-0809
swoodrow@woodrowpeluso.com
ppeluso@woodrowpeluso.com

Attorneys for Plaintiff

/s/ David J. Kaminski

Carlson & Messer LLP

JOINT STATUS REPORT AND
DISCOVERY PLAN

- 7 -

Matesky Law PLLC
1001 4th Avenue, Ste. 3200
Seattle, WA 98154
Ph: 206.701.0331

1 David J. Kaminski
2 Stephen A. Watkins
3 (*pro hac vice*)
4 5901 W. Century Blvd. #1200
5 Los Angeles, CA 90045
6 Tel: (310) 242-2200
7 Fax: (310) 242-2222
8 kaminskid@cmtlaw.com
9 watkinss@cmtlaw.com

10 /s/ Michael S. O'Meara

11 **The O'Meara Law Office PS**

12 Michael Shannon O'Meara
13 1602 Virginia Avenue
14 Everett, WA 98201-1704
15 Tel: 425-263-1732
16 Email: michael@omearalawoffice.com

17 *Attorneys for Defendant*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above titled document was served upon counsel of record by filing such papers via the Court's ECF system on November 12, 2019.

/s/ Patrick H. Peluso